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D.B. CIVIL SPECIAL APPEAL NO.625/2006.
[STATE OF RAJASTHAN & ANR. VS. GOPAL BOHRA & ANR.]

DATED :13/12/2006.

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS J.

Mr.Shyam Toshniwal for Mr.N.M.Lodha AAG
Mr.Vijay Mehta for the respondent.

Heard learned counsel for the parties.

The short issue raised in this appeal is whether the learned Single Judge was justified in substituting the award of payment of compensation in lieu of illegal retrenchment with reinstatement alongwith consequential benefits.

The respondent workman was employed under Executive Engineer, PWD, Phalodi Division for a total period from 11.04.1998 to 31.12.1988 and his services were terminated from 01.01.1989. The termination was subject matter of industrial dispute which was referred to Labour Court, Jodhpur. By award dated 20.09.99 the learned Labour Court found that the respondent workman having been in continuous service for one year, having actually worked for 240 days during the entire period of his service, his retrenchment could have been validly affected only by complying with the conditions of retrenchment under Chapter V A of the Industrial Disputes Act, 1947. Admittedly, there having been no compliance of Section 25 F of the Industrial Disputes Act the retrenchment was held to be invalid. However, considering

the fact that total period of service of the employee was very short, the dispute has been raised and referred after about 9 years of the date of retrenchment, the Labour Court opined that reinstatement in such cases was not appropriate relief. Instead it awarded Rs.12,500/- by way of lump sum compensation.

Aggrieved with the aforesaid order, the workman preferred S.B.Civil Writ Petition No.1738/1999 which was allowed by learned Single Judge vide judgment under appeal dated 31.08.2005 by modifying the award and directed the employer to reinstate the workman, treat him in continuous service from the date of his initial appointment with back wages for the period the workman remained out of employment as a consequence of his illegal retrenchment.

We are of the opinion that the substitution of award was not justified, merely by referring to the earlier judgment facts of which have not been placed before us for making a comparative service chart and other attending circumstances to draw a parallel. What relief is to be given in the particular cases depends on facts and circumstances of each case and cannot depend on straight jacket formula by referring to an earlier judgment. The recent judgments of the Supreme Court makes it clear that the reinstatement in the case of retrenchment cannot be granted as a matter of course but has to depend on variable circumstances which include the reason leading to retrenchment, the length of service rendered before the illegal termination of services, the alleged non-compliance of the provisions, the distance of time elapsed since date of retrenchment and the date of raising dispute and the time at which the relief is actually accorded. By no means we are stating the factors to be

exhaustive for the purpose of devising appropriate relief in case of illegal retrenchment.

Looking to the facts of the present case namely that the respondents workman was hardly in service for little more than 8 months before his services were brought to an end i.e on 1.1.1989. The reference itself was made in the Year 1997 and considering the nature of casual employment of respondent employee, the Labour Court had opined, and in our opinion it was rightly opined, that it was not a case in which reinstatement ought not to be granted. Therefore, without considering all these aspects, the grant of reinstatement as a matter of course following illegal retrenchment was not justified and cannot be sustained. Consequential, relief that flows from reinstatement also cannot be extending to the respondent workman. However, considering the attending circumstances, we are of the opinion that award of Rs.12,500/- was grossly inadequate and that amount deserves to be enhanced. In the facts and circumstances, the amount of Rs.12,500/- to be awarded to the workman on account of illegal retrenchment is enhanced to Rs.30,000/-, that will settle all the claims in respect of illegal retrenchment. The said amount, after adjusting any sum already paid to the workman in terms of award, shall be paid to the respondent by the appellant within two months from today, failing which it shall bear interest @ 9% per annum from the date of this order

With these observations the appeal stands disposed of.

[GOPAL KRISHAN VYAS],J.

[RAJESH BALIA], J.